IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.3 OF 2006.

Pradeep Vaikunt Kamat and anr. ..... Appellants.

V/s

Pratap V. Govekar and others. ..... Respondents.

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. S. Karpe, Advocate for the appellants.

Mr. S. G. Bhobe, Advocate for respondent No. 2.

Mr. S. S. Kantak, Advocate General with Ms. R. Chodankar, Addl. Govt. Advocate for the respondents No. 3 and 4.

CORAM : A.P. LAVANDE, J.

DATE : 16TH MARCH, 2006.

P.C.:

Heard Mr. Coelho Pereira, learned Senior Counsel on behalf of the appellants, Mr. Bhobe, the learned Counsel on behalf of respondent No.2 and Mr. Kantak, the learned Advocate General on behalf of respondents No.3 and 4.

2. By this appeal, the appellants take exception to the order dated 3.10.05 passed by the Ad hoc Additional District Judge, Mapusa, dismissing the Civil Misc. Application No.81/2004 in Civil Suit No.58/04, by which the application seeking interim relief filed by the

appellants/plaintiffs was dismissed.

3. The main grievance made by the leaned Senior Counsel appearing on behalf of the appellants is that the appellants have produced voluminous material before the trial Court by way of documentary evidence, which has not been considered by the trial Court while passing the impugned order and, therefore, it is just and proper that the impugned order is set aside and the matter is remanded to the trial Court to decide the application on merits, after considering all the documentary evidence upon which reliance has been placed by the appellants in support of their case. Mr. Bhobe, the learned Counsel appearing on behalf of the respondent No.2 and the learned Advocate General appearing on behalf of the respondents No.3 and 4 have not seriously disputed the fact that the trial Court has not considered the documentary evidence produced by the appellants which is apparent from the perusal of the impugned order.

4. I have gone through the impugned order as well as the material produced by the parties before the trial Court. A bare perusal of the impugned order discloses that the trial Court has not made any reference to several documents relied upon by the appellants which was necessary before giving any finding upon the issues raised by the parties. Therefore, I am in agreement with Mr. Coelho Pereira, the learned Senior Counsel that this is a fit case in

which the impugned order deserves to be quashed and set aside and the matter remanded to the trial Court to decide it afresh, after considering the entire documentary evidence produced by both the parties.

5. In the result, therefore, the impugned order dated 3rd October, 2005 is quashed and set aside. The trial Court is directed to hear the parties afresh and decide the matter after considering the documentary evidence produced by the the parties before the trial Court. It is made clear that I have not expressed any opinion on merits of the case and the trial Court shall decide the application on its own merits.

Since the Counsel appearing for the parties are not in a position to inform this Court the date fixed in the main suit, the parties are directed to appear before the trial Court on 24/03/2006, at 10.00 a.m., for further directions.

A.P. LAVANDE, J.

ssm